ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]
ENGLISH COURTS OF COMMON LAW.[2]
COURT OF APPEALS OF KENTUCKY.[3]
SUPREME COURT OF MISSOURI.[4]
SUPREME COURT OF NEW JERSEY.[5]
SUPREME COURT COMMISSION OF OHIO.[6]

ACTION. See *Street.*

ADMIRALTY.

Collision—Ships crossing—Ship overtaking.—A ship and a barque were both on the port tack. The barque was the windward vessel, and had the wind three points free. The ship was close hauled, and when first sighted by the barque was approaching her on her lee beam: *Held*, affirming the decision of the judge of the Admiralty Court, that the ships were crossing each other, and that it was the duty of the barque, being the windward vessel, to get out of the way of the other. The definition of an "overtaking ship" in *The Franconia* (2 P. D. 8) questioned: *The Peckforton Castle*, Law Rep. 2 P. D. (Ct. App.).

APPLICATION OF PAYMENTS.

Direction by Debtor.—Where a person owes another several distinct debts, he has the right to choose which debt he will pay first; and where, at the time of payment, he expressly directs what application is to be made of the payment, the creditor, if he retains the money, is bound to appropriate it as directed by the debtor: *Stewart* v. *Hopkins*, 30 Ohio St.

The creditor cannot divert a payment, so made by his debtor, from the appropriation made by him, upon mere equitable considerations, that do not amount to an agreement between the parties giving the creditor a right to appropriate the payment otherwise than directed by the debtor, though mere equitable considerations may control, where the payment is made without designating its application: *Id.*

ARBITRATION AND AWARD.

Agreement with Conductor that Manager of Company shall be sole Judge between Company and Conductor—Jurisdiction of Magistrate how far affected.—The complainant became conductor of a tramway company, under an agreement by which he was to pay them 5*l.*, to be

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[1] Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term 1877. The cases will probably be reported in 6 or 7 Otto.

[2] Selected from late numbers of the Law Reports.

[3] Prepared expressly for the American Law Register, by John Q. Ward, Esq., Cynthiana, Ky., from opinions filed during the present term. The cases will be reported in 13 Bush.

[4] From T. K. Skinker, Esq., Reporter; to appear in 66 Missouri Reports.

[5] From G. D. W. Vroom, Esq., Reporter; to appear in vol. 11 of his Reports.

[6] From E. L. DeWitt, Esq., Reporter; to appear in 30 Ohio St. Reports.

retained together with his wages for the current week, as security for the discharge of his duties and the observance of the rules of the company, &c., the company to have power, in case of any breach by the conductor of the rules, to retain the 5*l.* and his wages for the current week as liquidated damages for such breach; and it was provided that "the manager of the company should be the sole judge between the company and the conductor, whether the company was entitled to retain the whole or any part of the 5*l.* and wages for the current week as liquidated damages; and that the certificate should be binding and conclusive evidence in all courts of justice, civil and criminal, and before all stipendiary and police magistrates, &c., that the amount thereby certified as the amount to be retained was the true amount to be retained, and should bar the conductor of all right to recover it." The complainant having summoned the company before a police magistrate, under 6 & 7 Vict., ch. 86, to recover his deposit and wages: *Held*, that the agreement was not illegal, and the complaint being substantially a civil proceeding, the manager's certificate that the deposit and wages had been forfeited, was conclusive evidence of the fact, precluding the magistrate from making further inquiry: *London Tramway Co.* v. *Bailey*, Law Rep. 3 Q. B. Div.

ATTORNEY. See *Champerty.*

BILLS AND NOTES. See *Municipal Bonds.*

CHAMPERTY.

Agreement between Attorney and Client.—In Missouri champertous contracts are void; but a contract between attorney and client is not champertous because the attorney agrees to receive, as a compensation for his services, a portion of the property in controversy. It is an essential element in a champertous contract, that he also agree to pay some portion of the costs or expenses of the litigation: *Duke et al.* v. *Harper et al.*, 66 Mo.

CONFLICT OF LAWS. See *Husband and Wife; Municipal Bonds.*

CONSTITUTIONAL LAW. See *Criminal Law; Statute.*

Due Process of Law.—An assessment of the real estate of plaintiff in error, in the city of New Orleans, for draining the swamps of that city, was resisted in the state courts, and brought here by writ of error, on the ground that the proceeding deprives the owner of his property without due process of law: *Davidson* v. *Board of Administrators of New Orleans and the City of New Orleans*, S. C. U. S., Oct. Term 1877.

The origin and history of this provision of the Constitution considered as found in Magna Charta and in the 5th and 14th Amendments to the Constitution of the United States: *Id.*

The difficulty and the danger of attempting an authoritative definition of what it is for a state to deprive a person of life, liberty or property without due process of law, within the meaning of the 14th Amendment, suggested, and the better mode held to be to arrive at a sound definition by the annunciation of the principles which govern each case as it arises: *Id.*

It has already been decided in this court, that due process of law does not require that the assertion of the rights of the public against the individual, or the imposition of burdens upon his property for the

public use, should in all cases be done by a resort to the courts of justice: *Id.*

In the present case it is *held*, that when such a burden, or the fixing of a tax or assessment, is by the statute of the state required to be submitted to a court of justice before it becomes effectual, with notice to the owners and the right on their part to appear and contest the assessment, this is due process of law: *Id.*

Post-offices and Post-roads—Regulation of Mails—Limitation of Powers to search.—The power vested in Congress to establish "post-offices and post-roads" embraces the regulation of the entire postal system of the country. Under it Congress may designate what shall be carried in the mail, and what shall be excluded: *Matter of A. Orlando Jackson*, S. C. U. S, Oct. Term 1877.

Letters and sealed packages subject to letter postage in the mail can only be opened and examined under like warrant, issued upon similar oath or affirmation, particularly describing the thing to be seized, as is required when papers are subjected to search in one's own household. The constitutional guaranty of the right of the people to be secure in their papers against unreasonable searches and seizures extends to their papers, thus closed against inspection, wherever they may be: *Id.*

Regulations against the transportation in the mail of printed matter, which is open to examination, cannot be enforced so as to interfere in any manner with the freedom of the press. Liberty of circulating is essential to that freedom. When, therefore, printed matter is excluded from the mail, its transportation in any other way cannot be forbidden by Congress: *Id.*

Regulations excluding matter from the mail may be enforced through the courts, upon competent evidence of their violation obtained in other ways than by the unlawful inspection of letters and sealed packages; and with respect to objectionable printed matter, open to examination, they may in some cases also be enforced by the direct action of the officers of the postal service upon their own inspection, as where the object is exposed and shows unmistakably that it is prohibited, as in the case of an obscene picture or print: *Id.*

CORPORATION.

Suit by—Liability of Assignee of Corporate Stock.—In a suit by a corporation, a plea of the general issue admits the competency of the plaintiff to sue as such: *Pullman* v. *Upton*, S. C. U. S., Oct. Term 1877.

An assignee of corporate stock who has caused it to be transferred to himself on the books of the company, and holds it as collateral security for a debt due from his assignor, is liable for unpaid balances thereon to the company or to the creditors of the company, after it has become bankrupt: *Id.*

Liability on Contract.—Although there may be a defect of power in a corporation to make a contract, yet if a contract made by it is not in violation of its charter, or of any statute prohibiting it, and the corporation has by its promise induced a party relying on the promise and in execution of the contract to expend money and perform his part thereof, the corporation is liable on the contract: *Hitchcock et al.* v. *City of Galveston*, S. C. U. S., Oct. Term 1877.

Criminal Law.

Act not Criminal at Time of Commission cannot become so by Subsequent Act of Party—Federal Jurisdiction over Crimes.—An act which is not an offence at the time it is committed cannot become such by any subsequent independent act of the party, with which it has no connection. Accordingly the statute of the United States which declares that every person respecting whom proceedings in bankruptcy are commenced, either upon his own petition or that of a creditor, who within three months before their commencement obtains goods upon false pretences with intent to defraud, shall be punished by imprisonment, is inoperative to render the act an offence, because its criminal character is to be determined by subsequent proceedings, which at the time the goods were so obtained may not have been in his contemplation, and may be instituted against his will by another: *United States* v. *Lewis Fox*, S. C. U. S., Oct. Term 1877.

It is competent for Congress to enforce by suitable penalties all legislation necessary or proper to the execution of powers with which it is intrusted; and any act committed with a view of evading such legistion or fraudulently securing its benefit, may be made an offence against the United States. But it is otherwise when an act committed in a state has no relation to the execution of a power of Congress or to any matter within the jurisdiction of the United States. An act having no such relation is one in respect to which the state can alone legislate: *Id.*

Larceny—Fixtures.—S. was indicted for stealing four chandeliers, of the value of $40. The chandeliers were attached to the house of N. by being screwed into a gas-pipe that was fastened to the ceiling: *Held*, that at the common law there could be no larceny of a fixture if severed and carried away by one continuous act; but the modern authorities apply this rule only to things issuing out of, or growing upon, the land, and such as *adhere* to the freehold; not to personal chattels that are constructively annexed thereto. In such cases as this it is immaterial whether the carrying away was immediate and continuous, or whether the severance was at one time and the asportation at another. The party was guilty of larceny if there was a felonious taking: *Smith* v. *Commonwealth*, 13 Bush.

Custom.

Landlord and Tenant—Custom of the country as to Seeds, Tillages, &c.—Primâ facie the landlord is the person liable to the outgoing tenant, at the expiration of his tenancy, for the seeds, tillages, &c., properly bestowed by him upon a farm. Although, therefore, the ordinary practice (to avoid circuity) is for the incoming tenant to pay the outgoing tenant for the seed, tillages, &c., upon a valuation made between them, yet an alleged custom or usage that the outgoing tenant shall look to the incoming tenant for payment, to the exclusion of the landlord's liability, cannot be supported: *Bradburn* v. *Foley*, Law Rep. 3 C. P. Div.

Damages. See *Telegraph.*

Assessable as of date of Suit.—Judgments refer to the situation of the parties at the commencement of the suit, and, as a general rule, damages

are allowed in personal actions only to that date. In the case of continuing injuries, compensation for subsequent loss must be sought in another suit after the damage is sustained: *Brewster* v. *Sussex Railroad Co.*, 11 Vroom.

Debtor and Creditor.

Payment of Part of Debt—Effect of.—The payment by a debtor of a part of his liquidated debt is not a satisfaction of the whole, unless made and accepted upon some new consideration. Where, however, the debt is unliquidated and the amount is uncertain this rule does not apply. In such cases the question is whether the payment was in fact made and accepted in satisfaction: *Baird et al.* v. *The United States*, S. C. U. S., Oct. Term 1877.

Where a party brings an action for a part only of an entire indivisible demand and recovers judgment, he cannot subsequently maintain an action for another part of the same demand: *Id.*

Deed. See *Warranty.*

Easement.

Light—Quantum of Enjoyment—Right not to be measured by Purpose for which Light actually used.—In an action for the obstruction of ancient lights, the judge directed the jury that they were to consider whether there had been a sensible diminution of light, so as to make the plaintiff's premises less available for the purposes of occupation or business, to which they were then, or *might thereafter*, be made applicable, and that the damages were to be estimated according to the diminution of value of the premises for such purposes: *Held*, a right direction, on the ground that the purposes for which the premises had actually been used while the light had been enjoyed, were not the proper measure of the right. *Martin* v. *Goble*, 1 Campbell 320, dissented from: *Moore* v. *Hall*, Law Rep. 3 Q. B. Div.

Evidence.

Experts—Handwriting—Standards of Comparison.—Standards of comparison, to be used by experts upon the trial of an issue as to the genuineness of a signature, when not a paper already in the case or admitted to be genuine, are not admissible for that purpose, unless they are clearly proved by witnesses who testify directly to their having been written by the party whose signature is in question: *Pavey* v. *Pavey*, 30 Ohio St.

Where a receipt was offered as such standard of comparison, and a witness testified that the defendant gave him a receipt that looked very similar to the one offered, but that he could not positively say that it was the identical one offered in evidence: *Held*, that the evidence was too uncertain to warrant the admission of the paper as a standard of comparison: *Id.*

Husband and Wife.

Marriage—Statutes regulating Forms presumed to be Directory only.—Marriage is a civil contract, and at common law when made *per verba de presenti* is valid as of common right: *Meister* v. *Moore et al.*, S. C. U. S., Oct. Term 1877.

Though a state may by statute declare no marriage valid unless solemnized in a prescribed form, yet such construction will not be given to the law unless the legislative intention to that effect be plainly expressed: *Id.*

Hence, whatever forms may be prescribed by statute they are treated as directory only, and a marriage, good at common law, is held valid notwithstanding the disregard of statutory forms unless the statutes contain express words of nullity: *Id.*

Conflict of Laws—Consanguinity—Marriage illegal by the Law of Domicile.—The petitioner and respondent, Portuguese subjects in Portugal, and first cousins to each other, came to reside in England in 1858, and in 1866 they went through a form of marriage before the registrar of the district of the city of London. In 1873 they returned to Portugal, and their domicile throughout continued to be Portuguese. By the law of Portugal a marriage between first cousins is illegal, as being incestuous, but may be celebrated under a Papal dispensation. *Held*, reversing the decision of the court below, that the parties being by the law of the country of their domicile under a personal disability to contract marriage, their marriage ought to be declared null and void. *Simonin* v *Mallac*, 2 Sw. & Tr. 67; 29 L. J. (P. M. & A.) 971, distinguished: *Sottomayer* v. *DeBarros*, Law Rep. 2 Prob. Div.

Insurance.

Agreement for Extension of Time for Payment of Premium—Agent.—Where it is the practice of an insurance company to allow its agents to extend the time for payment of premiums and of notes given for premiums, it is indicative of the power given to those agents, and it is proper to submit evidence of such a practice to the jury: *Knickerbocker Life Ins. Co.* v. *Norton*, S. C. U. S., Oct. Term 1877.

If the agreement to extend be made before the note given for the premium matures, and before the forfeiture is incurred, it would be a fraud upon the insured to attempt to enforce the forfeiture when, relying on the agreement, he permits the original day of payment to pass: *Id.*

Policy—Limitation as to Time of Bringing Suit.—The charter of an insurance company required all suits to be brought on policies issued by the company within twelve months from the date of loss. A policy issued to the plaintiff contained a stipulation that it was made and accepted subject to the charter, and also provided that no suit or action for the recovery of any claim by virtue of the policy should be sustained in any court, unless commenced within twelve months after the loss should occur, and should any suit or action be commenced after the expiration of twelve months, the lapse of time should be taken and deemed as conclusive evidence against the validity of the claim, any statute of limitation to the contrary notwithstanding. Plaintiff brought suit on the policy more than twelve months after a loss had occurred: *Held*, that the above stipulation was operative and binding, and precluded the plaintiff from maintaining his suit: *Glass* v. *Walker*, *Assignee of the State Insurance Company*, 66 Mo.

Maritime—Deviation in Voyage—Subsequent Injury not caused by the Deviation.—Where the contract of insurance on a steamboat stipu-

lates for its continuance for one year, "unless it is terminated or made void by conditions thereinafter expressed," and contains a "permission to navigate the Ohio and Mississippi rivers below Cairo," but contains no condition expressly avoiding the policy for navigating the boat outside of the permitted waters, and the boat made a trip outside of these permitted waters and returned in safety where she was afterward destroyed by fire, in no way caused or contributed to by such departure: *Held*, that the only effect of such deviation was to relieve the insurer from any loss happening outside of the permitted waters, and that said policy was not avoided thereby, and that after a temporary departure and return in safety to the permitted waters, the insurers are liable for a subsequent loss covered by the policy, not caused or contributed to by such deviation: *Wilkins* v. *Insurance Company*, 30 Ohio St.

INTEREST. See *Municipal Bonds.*

JOINT TENANTS.

Survivorship by Contract. — The right of survivorship in estates held by joint tenants was abolished by statute in 1796. Yet joint tenants may by contract founded upon a sufficient consideration, agree that the survivor shall take the whole estate, or in case of one or more having children that the estate after the death of the last survivor shall pass and be vested in such children and their issue in equal shares and proportion. Under such a contract the tenants would still hold a life estate, and might require partition. And this life estate with the conditional estate, falling to any one in the event of his being the survivor, might be the subject of sale, yet the ultimate estate would pass to the survivor or the child or children of the survivor or survivors: *Truesdale* v. *White, &c.*, 13 Bush.

LANDLORD AND TENANT.

Liability of Lessee after Leaving Premises.—A lessee remains liable on his express agreement to pay rent, notwithstanding he may have assigned his lease with the lessor's assent, and the lessor has accepted rent from the assignee: *Lodge* v. *White*, 30 Ohio St.

But where the obligation of the lessee to pay rent is only that which is implied by law from his occupation of the premises, his assignment of the lease and surrender of possession to the assignee, with the assent of the lessor, extinguishes the privity of estate between the lessor and lessee, and the consequent implied liability of the lessee to pay rent: *Id.*

The assent of the lessor to such assignment, where nothing to the contrary appears, may be implied from his charging the rent to the new tenant and accepting payment thereof from him: *Id.*

Monthly Renting—Notice to Quit.—In monthly tenancies, a month's notice to quit is sufficient: *Steffens* v. *Earl*, 11 Vroom.

A notice must be to quit at the end of one of the recurring periods of holding, but a notice to quit on the day corresponding with the date of letting and entry is sufficient: *Id.*

Where no time is mentioned, and no annual rent reserved in a letting, the character of the tenure, as to time, will be controlled by the intervals between the payments; monthly or weekly payments implying monthly or weekly tenancies: *Id.*

LIBEL.

Privileged Communication—Malice in fact—Evidence of Express Malice.—In an action for libel, where the occasion is privileged, it is for the plaintiff to establish that the statements complained of were made from an indirect motive, such as anger, or with a knowledge that they were untrue, or without caring whether they were true or false, and not for the reason which would otherwise render them privileged; and if the defendant made the statements believing them to be true, he will not lose the protection arising from the privileged occasion, although he had no reasonable grounds for his belief: *Clark* v. *Molyneux*, Law Rep. 3 Q. B. Div.

LIEN.

Personal Property—Contract.—The lien at common law of the vendor of personal property to secure the payment of purchase-money is lost by the voluntary and unconditional delivery of the property to the purchaser, but this does not prevent the parties from contracting for a lien which, as between themselves, will be good after delivery: *Gregory* v. *Morris et al.*, S. C. U. S., Oct. Term 1877.

LIS PENDENS. See *Title.*

Must be in a Domestic Forum.—At law the pendency of a former action between the same parties for the same cause, is pleadable in abatement to a second action, because the latter is regarded as vexatious. But the former action must be in a domestic court, that is, in a court of the state in which the second action has been brought: *Mutual Life Insurance Co.* v. *Harris*, S. C. U. S., Oct. Term 1877.

The plea of a suit pending in equity in a foreign jurisdiction will not abate a suit at law in a domestic tribunal: *Id.*

MALICIOUS SUIT.

Abuse of Civil Process.—If a suit is instituted on a false claim, and is brought purely for malice and vexation, and without any probable cause therefor, the defendant's right of recovery for the expenses incurred in defending such a suit, other than ordinary costs, should be as fully recognised as if his property had been attached, his body taken, or his reputation injured. The damages may be less, but for the injury inflicted by such a suit a remedy should be afforded by the law, other than the judgment for ordinary costs: *Woods* v. *Fennell*, 13 Bush.

MARRIAGE. See *Husband and Wife.*

MASTER AND SERVANT.

Injuries to Servant—Defective Machinery.—It is the duty of employers to use ordinary care and diligence in providing sufficient and safe machinery for their employees; and if they know, or by the exercise of ordinary care and prudence could have known that machinery was defective and dangerous, and permit it to be used, they are responsible in damages, unless the defect was known by the employee, or could have been known by the exercise of ordinary care: *Quaid* v. *Cornwall*, 13 Bush.

If the employer had actual knowledge of the defective machinery, then he would be liable, unless he warned the employee of his danger: *Id.*

MERGER.

Mortgagee acquiring Equity of Redemption.—The assignee of a mortgage, acquiring the equity of redemption, may keep alive such mortgage as a part of his title: *New Jersey Ins. Co.* v. *Meeker*, 11 Vroom.

MORTGAGE. See *Merger.*

MUNICIPAL BONDS.

Negotiable Paper—Defences—Purchaser from bonâ fide Holder—Interest.—Where to a municipal bond which has several years to run, an over-due and unpaid coupon for interest is attached, that fact does not render the bond and the subsequently maturing coupons dishonored paper, so as to subject them, in the hands of a purchaser for value, to defences good against the original holder: *Cromwell* v. *County of Sac*, S. C. U. S., Oct. Term 1877.

A *bonâ fide* purchaser of negotiable paper for value before maturity takes it freed from all infirmities in its origin; the only exceptions being where the paper is absolutely void for want of power in the maker to issue it, or where the circulation is prohibited by law for the illegality of the consideration. Municipal bonds payable to bearer are negotiable instruments and subject to the same rules as other negotiable paper: *Id.*

A purchaser of a municipal bond from a *bonâ fide* holder who had obtained it for value before maturity, takes it equally freed as in the hands of such holder, though he may have had notice of infirmities in its origin: *Id.*

A purchaser of a negotiable security before maturity, unless personally chargeable with fraud in the purchase, can recover the full amount of the security against the maker, though he may have paid less than its par value, whatever may have been its original infirmity: *Id.*

When the rate of interest at the place of contract differs from the rate at the place of payment, the parties may contract for either rate, and the contract will govern: *Id.*

Municipal bonds in Iowa, drawing ten per cent. interest before maturity, draw the same interest, under the law of the state, after maturity, and coupons attached to such bonds draw six per cent. after maturity. Judgments in that state entered upon such bonds and coupons draw interest for the amount due on the bonds at the rate of ten per cent. a year, and upon the amount due upon the coupons at the rate of six per cent. a year: *Id.*

MUNICIPAL CORPORATION. See *Street.*

Contract by.—Common council of H. contracted for the improvement of a street according to fixed specifications of material and work. Under the contractor's construction of the contract he left a part of the work undone. The city paid him for the work done and made an assessment on the lot-owners for the work done: *Held*, that the council could only contract by ordinance and that they must prescribe the *kind* and *amount* of improvement to be made, and the kinds of material to be used; having done this, and having no authority to do otherwise, they had no authority to accept a part performance so as to bind the lot-owners; having no authority in the first place to contract at the expense of the lot-owners for such work as the contractor or city engineer might think ought to be done: *Henderson City* v. *Lambert*, 13 Bush.

The contractor could not have recovered against the city or lot-owners because he had not performed his contract. He could not have recovered on a *quantum meruit;* because one cannot recover for work done upon a public street except upon a contract: *Id.*

NEGLIGENCE. See *Master and Servant; Railroad.*

Railroad—Getting off Train while in motion.—The plaintiff took a seat in a railroad car, to be carried to the next station on defendant's road, but not having the usual fare for that point, twenty-five cents, handed the conductor a five dollar bill, out of which to take the fare. Being unable to change the bill or to get it changed on the train, he promised plaintiff to get it changed when they arrived at the next station, and to return the balance, after deducting the fare, to which plaintiff assented. On arriving there, the plaintiff being at the end of his journey, left the train, but waited on the platform while the train remained some twenty or thirty minutes, expecting the conductor to return him his money, but did not demand it, because he thought the conductor was busy, but seeing the train starting and the conductor, who had forgotten or neglected his promise, get aboard as it moved away, he ran some distance beyond the platform and climbed upon the car as it was moving off with increasing speed, for the sole purpose of getting his money. The conductor on demand for his change, handed him back the same bill and, as plaintiff claims, told him to get off the train as quick as possible, and immediately he jumped from the train, voluntarily and without compulsion, while it was running at the rate of four or five miles per hour and at a place not intended for passengers to alight. It did not appear that the remark of the conductor caused plaintiff to act differently from what he otherwise would have done nor that he requested that the train be stopped or slacked up to enable him to get off in safety: *Held,* that when the plaintiff got upon the train after it had moved away from the station, for the exclusive purpose of getting from the conductor the money due him and when he jumped off at a point beyond, not suitable for, nor intended for passengers to alight, the relation of passenger and carrier did not subsist between him and the railroad company: *Pittsburgh, Cincinnati and St. Louis Railway Co.* v. *Krouse*, 30 Ohio St.

The failure of the conductor to return him his money before leaving the station, did not exempt him from the exercise of proper care and prudence in attempting to get on and off the train while in motion, and acting under no compulsion: *Id.*

It was the province of the jury to determine both the nature and effect of this remark of the conductor; whether it was intended and understood as an order to leave the train, or was by way of advice in furtherance of plaintiff's intention, and also whether such remark affected the action of the plaintiff, and caused him to act differently from what he otherwise would have done: *Id.*

If the conductor ordered or directed the plaintiff to get off the train while it was in motion, at a place where it was not prudent to make the attempt, such order or direction, without compulsion, did not warrant the plaintiff to do a hazardous or imprudent act, and impute the consequences to the company. Whether the act was an imprudent one, amounting to contributory negligence, was for the jury to determine, in

view of all the circumstances in the case, the remark of the conductor and its effect on the mind of the plaintiff included: *Id.*

Not to be imputed to Child—Railroad—Passenger changing Car while Train in motion.—The doctrine of imputed negligence does not prevail in the state of Ohio, and a child of tender years, injured by the fault of another, is not deprived of a right of action, by reason of contributory negligence on the part of a parent or guardian: *Cleveland, &c., Railroad Co.* v. *Manson*, 30 Ohio St.

For a traveller upon a railroad train to pass from one car to another while the train is in motion, may generally be considered an act of negligence or imprudence; but when a party, acting under a suggestion from the conductor, attempts to pass from car to car, and is injured in consequence of the fact that the train was still moving, such party will not be debarred his right of recovery, merely because he undertook to comply with the conductor's suggestion, and it is the province of the jury to determine both the nature and effect of the conductor's remarks; whether they were intended and understood as an order to change from car to car, or were by way of advice, and also whether such remarks affected the action of the parties, and caused them to act differently from what they otherwise would: *Id.*

It is the duty of a railroad company to exercise the highest degree of care in the carriage of passengers, and it is the duty of conductors, when women and children are upon their trains, not to direct them to go into places of danger without furnishing such assistance as will prevent accident: *Id.*

Corporation—Defective Machinery—Wilful Neglect.—In an action against a corporation for destruction of life by wilful neglect, *held*, that evidence conducing to show that the machinery used was not of the most modern and approved character, and that defective machinery was in use, was not only competent, but that the jury would have been warranted in finding from such evidence alone that the killing was the result of wilful neglect: *Claxton* v. *Lexington & Big Sandy Railroad*, 13 Bush.

To make out a case for destruction of life by wilful neglect, it must be shown that the conduct of the party in fault was such as to evidence reckless indifference to the safety of the public, or an intentional failure to perform a plain and manifest duty, in the performance of which the public or the party injured had an interest: *Id.*

There must be such conduct as implies actual malice or anti-social recklessness: *Id.*

And when this grade of negligence is established, the guilty party must answer in damages, no matter how negligently the person injured may have acted: *Id.*

RAILROAD.

Negligence—Bridge.—There is no legal obligation on the part of a railroad company to build its bridges under public roads with an elevation so great that one of its employees standing upright on the top of a car will not be endangered, and consequently, if an employee while thus standing in the course of his business, be struck by one of such bridges, he cannot recover for such injury: *Baylor* v. *Delaware, Lackawanna and Western Railroad Co.*, 11 Vroom.

REAL ESTATE. See *Tenement.*

SAVINGS BANK.

Nature of.—A savings bank is an institution in the hands of disinterested persons, the profits of which, after deducting the necessary expenses of conducting the business, inure wholly to the benefit of the depositors, in dividends or in a reserved surplus for their greater security: *Huntington et al.* v. *National Savings Bank,* S. C. U. S., Oct. Term 1877.

SHERIFF'S SALE.

Title—Warranty.—There is no implied warranty of title by a sheriff on a sale of property under execution. When a sheriff acts in good faith in making a levy and selling the property of the execution debtor, having no sufficient reason to doubt the title, he cannot be held responsible for failure of title, the doctrine of *caveat emptor* applies; but when the sheriff has information of the existence of an adverse claim, or such information as would put one of ordinary prudence on inquiry in regard to title, then it is his duty to take a bond of indemnity, which would protect the owner and purchaser, or his duty at least to inform the bidders of the adverse claim, and a failure to do one or the other would render him liable to the purchaser: *Harrison* v. *Shanks,* 13 Bush.

SHIPPING.

Demurrage—Bill of Lading—Charter-party—Consignee prevented from clearing Ship by the default of other Consignees.—A cargo of wheat was shipped on board the plaintiff's ship under eight bills of lading, which contained the following clause: "Three working days to discharge the whole cargo, or 30*l.* per day demurrage." The defendants, the endorsees of one of the bills of lading, were prevented from completely unloading their portion of the cargo within the lay days, because it lay at the bottom of the hold, under the portions of cargo belonging to the other consignees, and such other portions of the cargo were not unloaded in time to enable the defendants to clear the ship of their portion within the lay days. The master was ready and willing to discharge the defendants' portion of the cargo as soon as it could be reached, and the defendants to receive the same, and the discharge of it in due time was only prevented by the before-mentioned circumstances: *Held,* that under the above-mentioned stipulation of the bill of lading, the consignee, as between himself and the ship-owner, undertook to bear the risk of being prevented from discharging his portion of cargo from the ship within the lay days by the default of his fellow-consignees, and the defendants were therefore liable for demurrage: *Straker* v. *Kidd,* Law Rep. 3 Q. B. Div.

In a second case the charter-party under which the ship was chartered stipulated that fourteen working days were to be allowed for loading and unloading at the port of discharge, and ten days on demurrage at 35*l.* day by day. The bills of lading, one of which, for a part of the cargo, had been endorsed to the defendants, contained the words, "paying freight for the same goods and all other conditions as per charter-party." In other respects the facts were precisely similar to those of the first case: *Held,* that the defendants were liable for demurrage: *Porteus et al.* v. *Watney et al.,* Law Rep. 3 Q. B. Div.

STATUTE.

Constitutional Law—General and Special Laws.—The constitutional amendment that prohibits the enactment of special and local laws in certain cases, applies to laws regulating the internal affairs of cities, as well as those of counties. Such matters are now required to be regulated by general laws, in all cases in which such course is practicable: *State ex rel. Van Riper* v. *Parsons*, 11 Vroom.

Within the sense of these prohibitory clauses, a general law as contradistinguished from one special or local, is a law that embraces a class of subjects or places, and does not omit any subject or place naturally belonging to such class: *Id.*

When a legislative end, within this department, cannot be effected by a general law, a special or local act may be resorted to for that purpose, as heretofore: *Id.*

In a proceeding by *quo warranto*, if the ground of information is that a law, in point of fact, will apply to but a single city, and is therefore local, such information must set forth the facts in a traversable form, showing this to be the situation: *Id.*

General.—A law, framed in general terms, restricted to no locality, and operating equally upon all of a group of objects, which, having regard to the purposes of the legislation, are distinguished by characteristics sufficiently marked and important to make them a class by themselves, is not a special or local law, but a general law: *State ex rel. Van Riper* v. *Parsons*, 11 Vroom.

Local.—An act which, by its terms, is a supplement to a city charter, and designed to regulate the internal affairs of such city, is a local act, and is unconstitutional and void: *State, Bingham, Prosecutor*, v. *Mayor of Camdem*, 11 Vroom.

STREET.

Railroads on—Damages to Property-owner—Action.—A railroad company, with the consent of the authorities of the city of L., laid down a track in one of the streets of the city, and operated its trains thereon. The owner of a house and lot brought suit against the railroad company for damages sustained by the partial obstruction of the street, and the injury sustained by the noise, dirt, smoke, cinders and jarring of the train: *Held*, that he could recover, and that the criterion of damages was the diminution of value to his house and lot, occasioned by the location and use of the road; to be determined by finding the value of the house and lot just before the railroad was talked of and located, and then determine what part of that value was taken from the house and lot by the obstruction of the street and the annoyance incident to the movement of engines and trains of cars along and over the railroad: *Jeff. & Mad. & Ind. Railroad Co.* v. *Esterle*, 13 Bush.

Enhanced vendible value of property by reason of the location of the road, cannot be set off against the damage sustained by the location: *Id.*

TELEGRAPH.

Failure to deliver Message—Damages.—In case of a breach of contract, actual damages not being proved, nominal damages may be recovered: *First Nat. Bank* v. *Western Union Telegraph Co.*, 30 Ohio St.

In case of failure to deliver a telegraphic message, the company is only liable for such damages as naturally flow from the breach of contract, or such as may fairly be supposed to have been within the contemplation of the parties at the time the contract was made; *Id.*

If the telegraph company is in default, but their default is made mischievous to a plaintiff only by the operation of some other intervening cause, such as the dishonesty of a third person, the rule "*causa proxima non remota spectatur*" applies, and the company cannot be made responsible for the loss occasioned by the act of such third person: *Id.*

TENEMENT.

Several Tenements in same House—Horizontal Division of Land.—There may be several and distinct tenements in the same building, under the same roof, as well where one is *over* the other, as where ones is *beside* the other: *Cincinnati College* v. *Yeatman*, 30 Ohio St.

When, in consideration of a gross sum in advance, an estate for years, renewable for ever, is granted in realty, it is real and not personal property, within the meaning of the tax laws of Ohio: *Id.*

Where such an estate is granted in the *second story* of a *building* by the owner of the fee, who is under perpetual covenant to rebuild, in case of fire or other casualty, with the same rights to the lessee in the new building as in the old, the interest and estate of the lessee is taxable in his name, when, by the terms of the lease, such was the intention of the parties: *Id.*

Whether there is such an estate in specified apartments of a building, which amounts to an interest in the realty, and whether, in such a case, the lessee should pay the taxes on such part of the whole, is to be determined by the terms of the lease: *Id.*

TITLE.

Bonâ fide Purchaser—Lis pendens.—The title of a *bonâ fide* purchaser for value without notice, will not be affected by the fact that his grantor acquired title by fraud or from one mentally imbecile. Notice that there was an existing lawsuit, and that the title would be contested, will not deprive him of the character of a *bonâ fide* purchaser, if such lawsuit has no relation whatever to the alleged fraud or mental imbecility, the defects insisted upon in the present suit. The defendant had a right to infer that the threatened litigation was to proceed upon the same ground as the former suit: *Drake* v. *Crowell*, 11 Vroom.

VENDOR AND PURCHASER. See *Lien.*

Waiver of Vendor's Lien.—Defendant having sold a tract of land to one P., on the same day bought another tract of plaintiff. For the purchase-money of the latter tract plaintiff received defendant's two notes, together with the proceeds of defendant's sale to P., which consisted in part of cash and in part of notes executed by P. Defendant conveyed his land to P., and received from plaintiff a title bond for the land bought of him. A year afterward, defendant, at the instance and by the advice of plaintiff, by the payment of $100, obtained from P. a mortgage on the land he had sold P. securing the payment of P.'s notes. Defendant's notes were paid, P. failed to pay his, and plaintiff foreclosed the mortgage, realizing a part of the debt only. In a suit to subject the

land sold by plaintiff to defendant to the payment of the unpaid balance: *Held*, that by advising and accepting the mortgage from P. plaintiff had waived any vendor's lien he might have had upon this land: *Anderson* v. *Griffith*, 66 Mo.

VERDICT.

Not impeachable by Testimony of Juror.—The affidavit of a juror cannot be used to impeach the verdict of a jury of which he was a member, by showing that the verdict was the result of an agreement that such a verdict should be rendered as was favored by a majority of the jury: *Lucas et al.* v. *Cannon et al.*, 13 Bush.

WARRANTY.

Subsequently-acquired Title—Deed.—It is a well-settled proposition, that subsequently-acquired lands pass under a grant with warranty: *Broadwell* v. *Phillips*, 30 Ohio St.

If parties have taken possession of land and occupied for a series of years under a deed containing an erroneous description, the mistake, as against the grantor and his representatives, will be corrected, where the evidence clearly shows such mistake: *Id.*

WILL.

Undue Influence.—The probate of a will was contested on two grounds: want of capacity and undue influence: *Held*, that the declarations of the deceased were competent to go to the jury on both issues: *Lucas* v. *Cannon*, 13 Bush.

In the lower court, undue influence was defined to be, "such influence as is exercised by coercion, imposition or fraud, not such as merely arises from the influence of gratitude, affection or esteem; it must be the ascendancy of another will over that of the testator by reason of coercion, imposition or fraud:" *Held* to have been erroneous. The jury ought to have been instructed to find against the will, if they believed from the evidence that the testator's wife or others had acquired such complete dominion over the testator's mind as to destroy free agency; if this dominion was exercised to induce him to make a will which, if not under such influence, he would not have made. And this might have been the case, although there was neither imposition, threats, fraud nor coercion: *Id.*

WITNESS.

Party—Competent at Common Law to prove Contents of a Lost Trunk.—At common law a party to a suit is a competent witness to prove the contents of a trunk or package, which by other testimony is shown to have been lost or destroyed under circumstances that render some one liable for the loss, and section 1079, Rev. Stat., was intended to do no more than to restore in the Court of Claims the common-law rule excluding parties as witnesses, which had been abolished by the Act of July 1st 1864; and, hence, claimant in this case was competent to prove the contents of a package of government money taken from his official safe by robbers: *United States* v. *Clark*, S. C. U. S., Oct. Term 1877.